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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,207	02/28/2002	Patrick Jay Lutz	5408/11295-US2	7037

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EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/08/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/087,207

Applicant(s)

LUTZ, PATRICK JAY

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 7-10, 13, 15-17, 19-21, 23 and 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-6, 11, 12, 14, 18, 22, 24-27, 31-46 and 51 is/are rejected.
- 7) ☐ Claim(s) 47-50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 13
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### **DETAILED ACTION**

- I. Rejection of claim 6 under 35 USC 112, 2<sup>nd</sup> paragraph will be maintained for reasons on record. There is no antecedent basis for R4 being benzyl.
- II. Rejection of claim 45 under 35 USC 112, 2<sup>nd</sup> paragraph will not be maintained in light of amendment filed 5/27/03. The active step of claim 45 is now complete.
- III. Art Rejections (35 USC 102 and 103) on record will not be maintained in light of amendment filed 5/27/03. The Art cited in Art Rejections are to methyl benzethonium chloride which is not embraced by the instant claims.
- IV. Objection to claims 47-50 will be maintained for reasons on record.
- V. ~~The elected invention is allowable for reasons on record.~~
- VI. Applicant must correct the definition of R4 in the specification at page 2 line 17.

### ***Response to Amendment***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. See Art rejections below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 11, 12, 24-27, 33, 34, 44, 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Wan (J. of Pharmaceutical Science, 1968, vol. 57 no. 11, pp. 1903-

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6). Wan teaches a composition comprising benzethonium chloride and salicylic acid.

See abstract.

Claims 1-5,11,12,24-27,33,34,44,45,51 are rejected under 35 U.S.C. 102(b) as being anticipated by Adachi et al (JP 10087496; 4/7/98). Adachi teaches a method of applying to skin (substrate) a composition comprising benzethonium chloride and salicylic acid to inhibit acne (microorganism). See abstract.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14,18,22,31,32,35-43,46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adachi as applied to claims 1-5,11,12,24-27,33,34,44,45,51 above in view of Biedermann et al (US 6150403; 11/21/00). See Adachi's 102(b) rejection above. Adachi teaches all that recited in claims 14,18,22,31,32,35-43,46 except for the invention comprising hydroacetic acid and glycols. However, Biedermann teaches a method of applying a composition comprising hydroacetic acid and glycols to skin to treat acne by controlling sebaceous gland activity. See abstract, column 2 lines 33-38, column 3 line 45 – column 5 line 53, column 12 line 59 – column 12 line 12. It would have been obvious to one having ordinary skill in the art to modify the invention of Adachi to include dehydroacetic acid and glycols. One having ordinary skill in the art would have been motivated to do this since compositions comprising dehydroacetic

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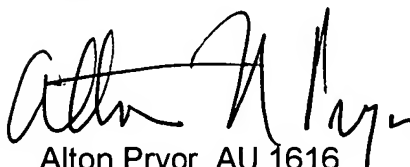
acid and glycols treat acne by controlling sebaceous gland activity. With respect to the instant ratio of ingredients (hydroacetic acid : benzethonium chloride or salicylic acid : benzethonium chloride) the optimum ratios would have been determined through routine experimentation. One having ordinary skill in the art would have been motivated to do this in order to develop the most effective method for controlling the secretion of oils from the sebaceous gland to reduce acne.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m.--4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

  
ALTON N. PRYOR  
PRIMARY EXAMINER  
Alton Pryor, AU 1616  
August 3, 2003